

unless modified pursuant to paragraph (a) of this section.

(2) The sum of the TAL and estimated discards shall be less than or equal to the ACT.

(c) *TAL allocation.* For each fishing year, up to 3 percent of the TAL may be set aside for the purpose of funding research. Once a research amount, if any, is set aside, the TAL will first be reduced by 5 percent to adjust for the incidental catch. The remaining TAL will be allocated to the individual IFQ permit holder as described in § 648.294(a).

(d) *Adjustments to the quota.* If the incidental harvest exceeds 5 percent of the TAL for a given fishing year, the incidental trip limit of 500 lb (226.8 kg) may be reduced in the following fishing year. If an adjustment is required, a notification of adjustment of the quota will be published in the FEDERAL REGISTER.

(e) *Research quota.* See § 648.22(g).

[76 FR 60644, Sept. 29, 2011, as amended at 78 FR 49187, Aug. 13, 2013]

§ 648.293 Tilefish accountability measures.

(a) If the ACL is exceeded, the amount of the ACL overage that cannot be directly attributed to IFQ allocation holders having exceeded their IFQ allocation will be deducted from the ACL in the following fishing year. All overages directly attributable to IFQ allocation holders will be deducted from the appropriate IFQ allocation(s) in the subsequent fishing year, as required by § 648.294(f).

(b) [Reserved]

[76 FR 60645, Sept. 29, 2011]

§ 648.294 Individual fishing quota (IFQ) program.

(a) *IFQ allocation permits.* (1) After adjustments for incidental catch, research set-asides, and overages, as appropriate, pursuant to § 648.292(c), the Regional Administrator shall divide the remaining TAL among the IFQ quota share holders who held IFQ quota share as of September 1 of a given fishing year. Allocations shall be made by applying the IFQ quota share percentages that exist on September 1 of a given fishing year to the IFQ TAL

pursuant to § 648.292(c), subject to any deductions for overages pursuant to paragraph (f) of this section. Amounts of IFQ allocation of 0.5 lb (0.23 kg) or smaller created by this calculation shall be rounded downward to the nearest whole number, and amounts of IFQ allocation greater than 0.5 lb (0.23 kg) shall be rounded upward to the nearest whole number, so that annual IFQ allocations are specified in whole pounds.

(2) Allocations shall be issued in the form of an annual IFQ allocation permit. The IFQ allocation permit shall specify the quota share percentage held by the IFQ allocation permit holder and the total pounds of tilefish that the IFQ allocation permit holder is authorized to harvest.

(3) In order to be eligible to hold tilefish IFQ allocation, an individual must be a U.S. citizen or permanent resident alien. Businesses or other entities that wish to hold allocation must be eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).

(b) *Application*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from NMFS. The application must be filled out completely and signed by the applicant. Each application must include a declaration of all interests in IFQ quota shares and IFQ allocations, as defined in § 648.2, listed by IFQ allocation permit number, and must list all Federal vessel permit numbers for all vessels that an applicant owns or leases that would be authorized to possess tilefish pursuant to the IFQ allocation permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(i) [Reserved]

(ii) *Renewal applications.* Applications to renew an IFQ allocation permit must be received by September 15 to be processed in time for the November 1 start of the next fishing year. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An IFQ allocation permit holder must renew his/her IFQ allocation permit on an annual basis by submitting an application for such permit prior to the end of the

fishing year for which the permit is required. Failure to renew an IFQ allocation permit in any fishing year will result in any IFQ quota share held by that IFQ allocation permit holder to be considered abandoned and relinquished.

(2) *Issuance.* Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by September 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ allocation permits on or before October 31 to those who hold IFQ quota share as of September 1 of the current fishing year. From September 1 through October 31, permanent transfer of IFQ quota share is not permitted, as described in paragraph (e)(4) of this section.

(3) *Duration.* An annual IFQ allocation permit is valid until October 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904; revised due to a transfer of all or part of the IFQ quota share or annual IFQ allocation under paragraph (e) of this section; or suspended for non-payment of the cost recovery fee as described in paragraph (h)(4) of this section.

(4) *IFQ Vessel.* All Federal vessel permit numbers that are listed on the IFQ allocation permit are authorized to possess tilefish pursuant to the IFQ allocation permit until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder that the vessel is no longer authorized to possess tilefish pursuant to the subject permit. An IFQ allocation permit holder who wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ allocation permit must send written notification to NMFS. This notification must include the vessel name and permit number, and the dates on which the IFQ allocation permit holder desires the vessel to be authorized to land tilefish pursuant to the IFQ allocation permit. A copy of the IFQ allocation permit must be carried on board each vessel so authorized to possess IFQ tilefish.

(5) *Alteration.* An annual IFQ allocation permit that is altered, erased, or mutilated is invalid.

(6) *Replacement.* The Regional Administrator may issue a replacement per-

mit upon written application of the annual IFQ allocation permit holder.

(7) *Transfer.* The annual IFQ allocation permit is valid only for the person to whom it is issued. All or part of the IFQ quota share or the annual IFQ allocation specified in the IFQ allocation permit may be transferred in accordance with paragraph (e) of this section.

(8) *Abandonment or voluntary relinquishment.* Any IFQ allocation permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to pay a recoverable cost fee, in accordance with the requirements specified in paragraph (h)(2) of this section, or for failure to renew in accordance with paragraph (b)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year.

(c)–(d) [Reserved]

(e) *Transferring IFQ allocations*—(1) *Temporary transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the initial holder of an annual IFQ allocation may transfer the entire annual IFQ allocation, or a portion of the annual IFQ allocation, to any person or entity eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section. Annual IFQ allocation transfers shall be effective only for the fishing year in which the transfer is requested and processed, unless the applicant specifically requests that the transfer be processed for the subsequent fishing year. The Regional Administrator has final approval authority for all annual IFQ allocation transfer requests. The approval of a temporary transfer may be rescinded if the Regional Administrator finds that an emergency has rendered the lessee unable to fish for the transferred annual IFQ allocation, but only if none of the transferred allocation has been landed.

(2) *Permanent transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, and subject to final approval by the Regional Administrator, a holder of IFQ quota share may permanently transfer the entire IFQ quota share allocation, or a portion of the IFQ quota share allocation, to any person or entity eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section.

(3) *IFQ allocation transfer restrictions.*

(i) If annual IFQ allocation is temporarily transferred to any eligible person or entity, it may not be transferred again within the same fishing year, unless the transfer is rescinded due to an emergency, as described in paragraph (e)(1) of this section.

(ii) A transfer of IFQ allocation or quota share will not be approved by the Regional Administrator if it would result in an entity holding, or having an interest in, a percentage of IFQ allocation exceeding 49 percent of the total tilefish adjusted TAL.

(iii) For the purpose of calculating the appropriate IFQ cost recovery fee, if the holder of an IFQ allocation leases additional IFQ allocation, the quantity and value of landings made after the date the lease is approved by the Regional Administrator are attributed to the transferred quota before being attributed to the allocation holder's base IFQ allocation, if any exists. In the event of multiple leases, landings would be attributed to the leased allocations in the order the leases were approved by the Regional Administrator. As described in paragraph (h) of this section, a tilefish IFQ quota share allocation holder shall incur a cost recovery fee, based on the value of landings of tilefish authorized under the allocation holder's annual tilefish IFQ allocation, including allocation that is leased to another IFQ allocation permit holder.

(4) *Application for an IFQ allocation transfer.* Any IFQ allocation permit holder applying for either permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for permanent IFQ quota share allocation transfers must be received by September 1 to be processed and effective before annual IFQ allocations are issued for the next fishing year. Ap-

plications for temporary IFQ allocation transfers must be received by October 10 to be processed for the current fishing year.

(i) *Application information requirements.* An application to transfer IFQ allocation must include the following information: The type of transfer (either temporary or permanent); the signature of both parties involved; the price paid for the transfer; a declaration of the recipient's eligibility to receive IFQ allocation; the amount of allocation or quota share to be transferred; and a declaration, by IFQ allocation permit number, of all the IFQ allocations in which the person or entity receiving the IFQ allocation has an interest. The person or entity receiving the IFQ allocation must indicate the permit numbers of all federally permitted vessels that will possess or land the IFQ allocation. Information obtained from the IFQ Allocation Transfer Form is confidential pursuant to 16 U.S.C. 1881a.

(ii) *Approval of IFQ transfer application.* Unless an application to transfer IFQ quota share and/or annual IFQ allocation is denied according to paragraph (e)(4)(iii) of this section, the Regional Administrator shall issue confirmation of application approval in the form of a new or updated IFQ allocation permit to the parties involved in the transfer within 30 days of receipt of a completed application.

(iii) *Denial of IFQ transfer application.* The Regional Administrator may reject an application to transfer IFQ quota share or annual IFQ allocation for the following reasons: The application is incomplete; the transferor does not possess a valid tilefish IFQ allocation permit; the transferor's or transferee's vessel or tilefish IFQ allocation permit has been sanctioned pursuant to an enforcement proceeding under 15 CFR part 904; the transfer would result in the transferee having a tilefish IFQ allocation or holding IFQ quota share that exceeds 49 percent of the adjusted TAL allocated to IFQ allocation permit holders; the transfer is to a person or entity that is not eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section; the transferor or transferee is delinquent in payment of an IFQ cost recovery fee as described in

paragraph (h)(4) of this section; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(f) *IFQ allocation overages.* If an IFQ allocation is exceeded, including by amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, the amount of the overage will be deducted from the IFQ shareholder's allocation in the subsequent fishing year(s). If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ allocation permit is issued for the subsequent fishing year, a revised IFQ allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation has already been landed or transferred, the IFQ allocation permit will indicate a reduced allocation for the amount of the overage in the next fishing year.

(g) *IFQ allocation acquisition restriction.* No person or entity may acquire more than 49 percent of the annual adjusted tilefish TAL, specified pursuant to § 648.294, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation. The calculation of IFQ allocation for purposes of the restriction on acquisition includes IFQ allocation interests held by: A company in which the IFQ holder is a shareholder, officer, or partner; an immediate family member; or a company in which the IFQ holder is a part owner or partner.

(h) *IFQ cost recovery.* As required under section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the Regional Administrator shall collect a fee to recover the actual costs directly related to the management, data collection and analysis, and enforcement of the tilefish IFQ program.

(1) *Payment responsibility.* Each tilefish IFQ allocation permit holder

with quota share shall incur a cost recovery fee annually, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation, including allocation that he/she leases to another IFQ allocation permit holder. The tilefish IFQ allocation permit holder is responsible for paying the fee assessed by NMFS.

(2) *IFQ fee determination.* The tilefish IFQ cost recovery billing period runs annually from January 1 through December 31.

(i) *Determination of total recoverable costs.* The Regional Administrator shall determine the actual costs directly associated with the management, data collection and analysis, and enforcement of the tilefish IFQ program incurred by NMFS during the cost recovery billing period.

(ii) *Calculating fee percentage.* The recoverable costs determined by the Regional Administrator will be divided by the total ex-vessel value of all tilefish IFQ landings during the cost recovery billing period to derive a fee percentage. Each IFQ allocation permit holder with quota share will be assessed a fee based on the fee percentage multiplied by the total ex-vessel value of all landings under his/her IFQ allocation permit, including landings of allocation that was leased to another IFQ allocation permit holder.

(A) The ex-vessel value for each pound of tilefish landed by an IFQ allocation permit holder shall be determined from Northeast Federal dealer reports submitted to NMFS, which include the price per pound paid to the vessel at the time of dealer purchase.

(B) The cost recovery fee percentage shall not exceed 3 percent of the total value of tilefish landings, as required under section 304(d)(2)(B) of the Magnuson-Stevens Act.

(3) *Fee payment procedure.* NMFS will create an annual IFQ allocation bill for each cost recovery billing period and provide it to IFQ allocation permit holders with quota share. The bill will include information regarding the amount and value of IFQ allocation landed during the prior cost recovery billing period, and the associated cost recovery fees.

(i) *Payment due date.* An IFQ allocation permit holder who has incurred a

cost recovery fee must pay the fee to NMFS within 45 days of the date of the bill.

(ii) *Payment submission method.* Cost recovery payments shall be made electronically via the Federal Web portal, *www.pay.gov*, or other Internet sites designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the cost recovery fee bill. Electronic payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Alternatively, payment by check may be authorized by Regional Administrator if he/she determines that electronic payment is not practicable.

(4) *Payment compliance.* If an IFQ allocation permit holder does not submit full payment by the due date described in paragraph (h)(3)(i) of this section, the Regional Administrator may:

(i) At any time thereafter, notify the IFQ allocation permit holder in writing that his/her IFQ allocation permit is suspended, thereby prohibiting landings of tilefish above the incidental limit, as specified at § 648.295.

(ii) Disapprove any transfer of annual tilefish allocation or quota share to or from the IFQ allocation permit holder as described in paragraph (e)(4)(iii) of this section, until such time as the amount due is paid.

(iii) Deny renewal of the IFQ allocation permit if it had not yet been issued for the current year, or deny renewal of the IFQ allocation permit for the following year.

(iv) If the fee amount is not appealed, the Regional Administrator may issue a Final Administrative Determination (FAD) as described in paragraph (h)(5) of this section, based upon available information.

(5) *Appeal of IFQ fee amount.* If a tilefish IFQ allocation permit holder disagrees with the fee amount determined by NMFS, he/she may appeal the cost recovery bill.

(i) IFQ fee appeals must be submitted to NMFS in writing before the due date described in paragraph (h)(3)(i) of this section.

(ii) The IFQ allocation permit holder shall have the burden of demonstrating that the fee amount calculated by NMFS is incorrect and what the correct amount is.

(iii) If a request to appeal is submitted on time, the Regional Administrator shall notify the IFQ allocation permit holder in writing, acknowledging the appeal and providing 30 days to submit any additional relevant documentation supporting an alternative fee amount.

(iv) While the IFQ fee is under appeal and the tilefish IFQ allocation permit is suspended, as described in paragraph (h)(4) of this section, the IFQ allocation permit holder may request a Letter of Authorization to fish until the appeal is concluded. Any tilefish landed pursuant to the above authorization will count against the IFQ allocation permit, if issued.

(v) *Final Administrative Determination (FAD).* Based on a review of available information, including any documentation submitted by the IFQ allocation permit holder in support of the appropriateness of a different fee amount, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that an alternate fee amount is correct. This determination shall be set forth in a FAD that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce.

(A) The IFQ allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD.

(B) If the IFQ allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall:

(1) Refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection; and

(2) Cancel any Letter of Authorization to fish that had been issued during the appeal.

(vi) If NMFS does not receive full payment of an IFQ cost recovery fee prior to the end of the cost recovery billing period immediately following the one for which the fee was incurred, the subject IFQ allocation permit and

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any associated IFQ quota share shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(8) of this section.

(6) *Annual cost recovery report.* NMFS will publish annually a report on the status of the tilefish IFQ cost recovery program. The report will provide details of the costs incurred by NMFS for the management, enforcement, and data collection and analysis associated with the tilefish IFQ program during the prior cost recovery billing period, and other relevant information at the discretion of the Regional Administrator.

(i) *Periodic review of the IFQ program.* A formal review of the IFQ program must be conducted by the MAFMC within 5 years of the effective date of the final regulations. Thereafter, it shall be incorporated into every scheduled MAFMC review of the FMP (*i.e.*, future amendments or frameworks), but no less frequently than every 7 years.

[78 FR 49187, Aug. 13, 2013]

§ 648.295 Tilefish incidental trip limits.

(a) *Incidental trip limit for vessels not fishing under an IFQ allocation.* Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 500 lb (226.8 kg) of tilefish at any time, unless the vessel is fishing under a tilefish IFQ allocation permit, as specified at § 648.294(a).

Any tilefish landed by a vessel fishing under an IFQ allocation permit, on a given fishing trip, count as landings under the IFQ allocation permit.

(b) *In-season closure of the incidental fishery.* The Regional Administrator will monitor the harvest of the tilefish incidental TAL based on dealer reports and other available information, and shall determine the date when the incidental tilefish TAL has been landed. The Regional Administrator shall publish a notice in the FEDERAL REGISTER notifying vessel and dealer permit holders that, effective upon a specific date, the incidental tilefish fishery is closed for the remainder of the fishing year.

[76 FR 60647, Sept. 29, 2011]

§ 648.296 Tilefish recreational possession limit.

Any person fishing from a vessel that is not fishing under a tilefish vessel permit issued pursuant to § 648.4(a)(12), may land up to eight tilefish per trip. Anglers fishing onboard a charter/party vessel shall observe the recreational possession limit.

[76 FR 60647, Sept. 29, 2011]

§ 648.297 Tilefish gear restricted areas.

No vessel of the United States may fish with bottom-tending mobile gear within the areas bounded by the following coordinates:

Canyon	N. lat.			W. long.		
	Degrees	Min	Seconds	Degrees	Min	Seconds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
	40.0	14.0	28.0	68.0	11.0	28.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
Veatch	40.0	28.0	31.0	67.0	43.0	0.0
	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
Norfolk	39.0	54.0	43.0	69.0	40.0	52.0
	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0